

CHAPTER 15

BACKGROUND CHECKS

15-1 LEGAL AUTHORITY

In accordance with Tennessee Code Annotated § 71-2-111, the Tennessee Commission on Aging and Disability (TCAD) shall require its contractors, grantees, and subcontractors to verify individual background information for newly hired employees and volunteers who provide direct care for, have direct contact with, or have direct responsibility for the safety and care of older persons and adults with disabilities in their homes.

15-2 DEFINITIONS

- (1) Client/Consumer – Any person receiving services from a contract, grantee or subcontractor supported by funding administered by TCAD.
- (2) In-home worker – Any worker who makes contact with a client in the home, which includes residing in a long term care facility.
- (3) Newly hired employees or volunteers – those persons who have been hired for pay or volunteer service as of March 1, 2008.

15-3 SCOPE

Contractors, grantees, and subcontractors shall maintain personnel files on all employees for hire or volunteer service which contain an application, date of hire, and two personal references.

For newly hired employees or volunteers for in-home workers, the file shall also contain verification, by the employer, of a search of the following registries:

- (1) National Sex Offender Registry (<http://www.nsopr.gov/>);

(2) Tennessee Felony Offender Registry

(https://www.tennesseeanytime.org/foil/foil_index.jsp);

- (3) Tennessee Abuse Registries (<http://health.state.tn.us/Boards/disciplinary.htm> and http://tennessee.gov/dmrs/protection/abuse_reg.html), as well as a local or state law enforcement background check. For the newly hired employees or volunteers for in-home workers, who have less than 24 months residency in the State of Tennessee, verification of the state abuse and felony registries and local law enforcement background check, from which the city and state where the potential worker or volunteer relocated, if those registries are available.

15-4 CRIMINAL HISTORY

Past criminal history shall be considered in the hiring process of an employee or volunteer. Applicants with adverse criminal histories shall be evaluated on the basis of consultation with appropriate professionals and the following factors:

- (1) The relationship between the incident and the type of employment or service that the applicant will provide;
- (2) The applicant's employment or volunteer history before and after the incident;
- (3) The applicant's efforts and success at rehabilitation;
- (4) The likelihood that the incident would prevent the applicant from performing his or her responsibilities in a manner consistent with the safety and welfare of the consumers served by the agency;
- (5) The circumstances and/or factors indicating the incident is likely to be repeated;
- (6) The nature, severity, number, and consequences of the incidents disclosed;

- (7) The circumstances surrounding each incident, including contributing societal or environmental conditions;
- (8) The age of the individual at the time of the incident;
- (9) The amount of time elapsed since the incident occurred;
- (10) A written justification, signed by service provider director, including these considerations, shall be included in any newly hired employee or volunteer's personnel file.

15-5 TBI AND FBI BACKGROUND CHECKS

The provider may require TBI and FBI background checks. A TBI or FBI criminal background check may not be requested without the potential worker submitting a sample of fingerprints. The provider may require the prospective employee or volunteer to bear the cost of the background check.

15-6 WAIVER OF STATE OR LOCAL CRIMINAL BACKGROUND CHECK

A local or state criminal background check may be waived by the provider for volunteers who work in the Nutrition Program; however, checks of the National Sex Offender Registry, Tennessee Felony Offender Registry and the Tennessee Abuse Registries must be performed and documented. These registry checks may be performed utilizing the internet.

15-7 APPEALS

The applicant denied employment or volunteer status on the basis of a negative report may appeal to the provider. The provider shall provide the applicant a copy of the negative report and allow him to appeal within 10 days of the mailing date. The only appealable issues are:

- (1) He/she is not the person identified in the record.
- (2) The record is not correct. The applicant may not litigate the facts of the record, only to show that such charge has since been dismissed, nolle or resulted in acquittal.